

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL E. SHOTWELL,

Plaintiff,

v.

S. BRANDT, et al.,

Defendants.

No. C 10-05232 CW (PR)

ORDER VACATING ORDER GRANTING
IN FORMA PAUPERIS STATUS;
RESCINDING DIRECTIVE THAT
PLAINTIFF PAY FULL FILING FEE;
AND DIRECTING PLAINTIFF TO
SHOW CAUSE WHY CLAIMS AGAINST
UNSERVED NAMED DEFENDANTS
SHOULD NOT BE DISMISSED

Plaintiff, a state prisoner currently incarcerated at Salinas Valley State Prison (SVSP), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. Venue is proper because the events giving rise to the claims in the complaint are alleged to have occurred at the SVSP, which is located in this judicial district. See 28 U.S.C. § 1391(b).

I. Vacating Order Granting In Forma Pauperis Status

On December 15, 2010, the Court granted Plaintiff in forma pauperis (IFP) status and, pursuant to 28 U.S.C. § 1915(b), directed the SVSP Prisoner Trust Account Office to make monthly deductions from Plaintiff's trust account until he had paid the full \$350.00 filing fee. The Court also instructed Plaintiff to pay an initial partial filing fee of \$ 120.00. However, the Court's records indicate that Plaintiff actually paid the full filing fee of \$350.00 on December 16, 2010. See Receipt Number 34611054023. Therefore, the Court's Order granting IFP status to Plaintiff is VACATED, and the directive that Plaintiff pay the full filing fee is RESCINDED.

The Clerk of the Court shall send copies of this Order to the Court's Finance Office and to the SVSP Prisoner Trust Accounts

1 Office. This Court's Finance Office shall reimburse Plaintiff for
2 all fee payments that have been deducted from his trust account and
3 sent to the Court pursuant to the December 15, 2010 Order.

4 II. Directing Plaintiff to Show Cause Why Claims Against Unserved
5 Named Defendants Should Not Be Dismissed

6 In his complaint, Plaintiff names the following Defendants:
7 SVSP Lieutenants S. Brandt, L. Negron and R. A. Kessler; SVSP
8 Sergeant B. Petersen; SVSP Warden G. Lewis; SVSP Appeals
9 Coordinators E. B. Jones, P. Nickerson and E. Medina; SVSP
10 Correctional Officers C. Santos, G. Gudino, S. Celaya and D.
11 Garcia; SVSP Captain W. Muniz; and Chief of Inmate Appeals Branch
12 N. Grannis. Plaintiff seeks monetary damages.

13 To date, Plaintiff has not filed a proof of service on any of
14 the Defendants named above. Rule 4(m) of the Federal Rules of
15 Civil Procedure provides:

16 If service of a summons and complaint is not made upon a
17 defendant within 120 days after the filing of the
18 complaint, the court, upon motion or on its own
19 initiative after notice to the plaintiff, shall dismiss
20 the action without prejudice as to that defendant or
21 direct that service be effected within a specified time;
22 provided that if the plaintiff shows good cause for the
23 failure, the court shall extend the time for service for
24 an appropriate period.

25 Fed. R. Civ. P. 4(m). Here, Plaintiff's complaint has been pending
26 for over 120 days and thus, absent a showing of "good cause,"
27 claims against the unserved defendants are subject to dismissal
28 without prejudice. See Fed. R. Civ. P. 4(m).

Recognizing the fact that he is an incarcerated pro se
litigant, the Court finds good cause exists to extend the service
deadline under Rule 4(m). Within thirty (30) days from the date of
this Order, Plaintiff shall file proof that he has served the named

1 Defendants. The failure to do so will result in the dismissal of
2 all claims against these named Defendants without prejudice.

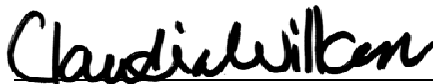
3 Even if a prisoner pays the fee and serves the complaint on
4 his own, the Court is still required to review the action before it
5 can proceed. See 28 U.S.C. § 1915A(a) (federal courts must engage
6 in a preliminary screening of cases in which prisoners seek redress
7 from a governmental entity or officer or employee of a governmental
8 entity.) Once Plaintiff has filed proof that he has served the
9 named Defendants, the Court will screen it in a separate written
10 order.

11 It is Plaintiff's responsibility to prosecute this case.
12 Plaintiff must keep the Court informed of any change of address and
13 must comply with the Court's orders in a timely fashion. Failure
14 to do so may result in the dismissal of this action for failure to
15 prosecute, pursuant to Federal Rule of Civil Procedure 41(b).

16 Extensions of time are not favored, though reasonable
17 extensions will be granted. Any motion for an extension of time
18 must be filed no later than fifteen (15) days prior to the deadline
19 sought to be extended.

20 IT IS SO ORDERED.

21 DATED: 4/18/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MANUEL E SHOTWELL,

Case Number: CV10-05232 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

S BRANDT et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 18, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Manuel Shotwell T-57486
D-7-118 low
Salinas Valley State Prison
P. O. Box 1050
Soledad, Ca 93960-1050

U.S. District Court's Finance Office
San Francisco, CA
(sent via inter-office mail)

Salinas Valley State Prison
Prisoner Trust Accounts
P. O. Box 1050
Soledad, Ca 93960-1050

Dated: April 18, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk